

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 5

Notice & Time Requirements

5.4 Notice of Hearings in Child Protective Proceedings

Initial disposition hearings and review hearings.

Effective February 25, 2004, MCR 3.975(B) was amended. Near the bottom of page 134, replace the quote of MCR 3.975(B) with the following text:

“(B) *Notice.* The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR[] 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.”

Permanency planning hearings and hearings on termination of parental rights.

Effective February 25, 2004, MCR 3.976(C) was amended. On page 135, replace the quote of MCR 3.976(C) with the following quote and insert the additional text:

“(C) *Notice.* Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR 3.921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.”

Effective February 25, 2004, the Supreme Court also amended MCR 3.977(C). MCR 3.977(C), governing termination of parental rights, states:

“(C) Notice; Priority.

(1) Notice must be given as provided in MCR 3.920 and MCR 3.921(B)(3).

(2) Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court’s caseload.”

CHAPTER 7

Preliminary Hearings

7.5 Appointment of Lawyer-Guardians Ad Litem for Children

On page 186, replace the first full paragraph and the quote of MCR 3.915(B)(2)(a) with the following text:

The court rule governing appointment of lawyer-guardians ad litem, MCR 3.915(B)(2), references the statute and requires that the court appoint a lawyer-guardian ad litem for the preliminary hearing. Effective February 25, 2004, MCR 3.915 was amended. Amended MCR 3.915(B)(2)(a) requires that the court ask the lawyer-guardian ad litem, at each hearing, if he or she has met with the child as required by MCL 712A.17d(1)(d), and if the lawyer-guardian ad litem has not met with the child, he or she must state the reasons for failing to do so on the record. The Staff Comment on this amendment states that it “is designed to enforce the statutory requirement in MCL 712A.17d that lawyers-guardians ad litem for children meet with their clients before each hearing.” MCR 3.915(B)(2)(a) states:

“(2) **Child.**

(a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d. At each hearing, the court shall inquire whether the lawyer-guardian ad litem has met with the child, as required by MCL 712A.17d(1)(d) and if the attorney has not met with the child, the court shall require the lawyer-guardian ad litem to state, on the record, his or her reasons for failing to do so.

MCR 3.915(D) was also amended. The amended rule allows another attorney to temporarily substitute for the lawyer-guardian ad litem in certain circumstances. On page 186, replace the quote of MCR 3.915(D) with the following text:

“(D) *Duration.*

(1) An attorney retained by a party may withdraw only on order of the court.

(2) An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by

the court. The court may permit another attorney to temporarily substitute for the child's lawyer-guardian ad litem at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. Such a substitute attorney must be familiar with the case and, for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker before the hearing unless the child's lawyer-guardian ad litem has done so and communicated that information to the substitute attorney. The court shall inquire on the record whether the attorneys have complied with the requirements of this subrule."

CHAPTER 7

Preliminary Hearings

7.10 Required Procedures at Preliminary Hearings

Insert the following new subsections on page 193 before Section 7.11:

I. Inquiring About the Father's Identity

Effective February 25, 2004, if the child's father has not been identified, the court must ask the mother about the identity and whereabouts of the father. MCR 3.965(B)(13).

J. Inquiring About Relative Caregivers

"The court must inquire of the parent, guardian, or legal custodian regarding the identity of relatives of the child who might be available to provide care." MCR 3.965(B)(13).

CHAPTER 8

Placement of a Child

8.6 Required Advice Concerning Initial Service Plans

Effective February 25, 2004, MCR 3.965(E) was amended. Beginning on the bottom of page 210, replace the quote of MCR 3.965(E) with the following text:

“(E) *Advice; Initial Service Plan.* If placement is ordered, the court must, orally or in writing, inform the parties:

“(1) that the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days after the placement;

“(2) that participation in the initial service plan is voluntary unless otherwise ordered by the court;

“(3) that the general elements of an initial service plan include:

(a) the background of the child and the family,

(b) an evaluation of the experiences and problems of the child,

(c) a projection of the expected length of stay in foster care, and

(d) an identification of specific goals and projected time frames for meeting the goals; and

“(4) that, on motion of a party, the court will review the initial service plan and may modify the plan if it is in the best interests of the child.

“The court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child’s best interests, as required by MCL 722.954a(2). In a case to which MCL 712A.18f(6) applies, the court shall require the agency to provide the name and address of the child’s attending physician of record or primary care physician.”*

*See Sections 8.2 and 8.11(B) for discussions of MCL 722.954a(2). For a discussion of MCL 712A.18(f)(6), see Section 13.6.

CHAPTER 17

Permanency Planning Hearings

17.3 Time Requirements

Effective February 25, 2004, MCR 3.976(B)(3) was amended. Near the bottom of page 362, replace the quote of MCR 3.976(B)(3) with the following:

“(3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning no later than one year after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a dispositional review hearing.”

CHAPTER 17

Permanency Planning Hearings

17.5 Court's Options Following Permanency Planning Hearings

Second decision: determine whether to initiate proceedings to terminate parental rights.

Effective February 25, 2004, MCR 3.976(E)(2) was amended. Near the bottom of page 368, replace the quote of MCR 3.976(E)(2) with the following:

“(2) Continuing Foster Care Pending Determination on Termination of Parental Rights. If the court determines at a permanency planning hearing that the child should not be returned home, it must order the agency to initiate proceedings to terminate parental rights, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interests of the child to presently begin proceedings to terminate parental rights. The order must specify the time within which the petition must be filed, which may not be more than 42 days after the date of the order.”

CHAPTER 18

Hearings on Termination of Parental Rights

In this chapter. . .

Effective February 25, 2004, MCR 3.977 was amended. In the middle of page 374, after the quote of MCR 3.977(A)(1), insert the following text:

MCR 3.977(C)(2) states:

“Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court’s caseload.”